BILL NO. S-82-12-28

SPECIAL ORDINANCE NO. S-07-83

AN ORDINANCE approving Resolution No. 5946-82, West Central, Phase VII, with Hipskind Concrete Corporation, in connection with the Board of Public Works.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain Contract dated December 1, 1982, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works and Hipskind Concrete Corporation, for:

> the installation of curbs and sidewalks where needed on the following streets: Thieme Drive; Main Street; Nelson Street; Berry Street; Wayne Street; Rockhill; Jackson Street; and Union Street; also known as West Central Neighborhool Improvement, Phase VII;

under Board of Public Works Resolution No. 5946-82, involving a total cost of Twenty-Three Thousand Four Hundred Eighty-Nine and 50/100 Dollars ($23,489.50), all as more particularly set forth in said Resolution and Contract, and which is on file with the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

James S. Stier
Councilmember

APPROVED AS TO FORM
AND LEGALITY

Bruce O. Boxberger
Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Stier, seconded by Eisbart, and duly adopted, read the second time by title and referred to the Committee Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on ________, the ________ day of ________, 19___, at ________ o'clock ___.M., E.S.T.

DATE: 12-28-82

CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier, seconded by GiaQuinta, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BRADBURY	✓				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
SCHMIDT	✓				
SCHOMBURG	✓				
SCRUGGS	✓				
STIER	✓				
TALARICO	✓				

DATE: 1-11-83

CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ZONING MAP)~~ (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-07-83 on the 11th day of January, 1983.

ATTEST: (SEAL)

CHARLES W. WESTERMAN - CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of January, 1983, at the hour of 11:30 o'clock A.M., E.S.T.

CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 14th day of January 1983, at the hour of 3 o'clock P.M., E.S.T.

WIN MOSES, JR. - MAYOR

SUBJECT TO COUNCILMANIC APPROVAL
PRELIMINARY MEETING ________
RATIFICATION ________

CONTRACT

72-150-31
12/1/82

This Agreement, made and entered into this 1 day of December, 1982

by and between -------------- HIPSKIND CONCRETE CORPORATION --------------------

------------------------ 5502 Mason Drive, Fort Wayne, Indiana ----------------

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, hereinafter called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to improve Improvement Resolution No. 5946-82 the curbs and sidewalk where needed along Thieme Drive, Main St., Nelson Street, Berry Street, Wayne Street, Rockhill, Jackson Street, and Union Street.

Also known as WEST CENTRAL NEIGHBORHOOD IMPROVEMENT, PHASE VII.

by grading and paving the roadway to a width of XXXXXXXXXXXXXXX feet with XXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5946-82 attached hereto and by reference made a part hereof. ~~and at the following price per lineal foot~~

At the following prices:

Concrete Removal	Two dollars and no cents per square yard	2.00
Curb Removal	One dollar and fifty cents per lineal foot	1.50
Concrete Curb Type III	Five dollars and twenty cents per lineal foot	5.20
2 Ft. Curbface Walk	Two dollars and sixty-five cents per square foot	2.65
4" Concrete Sidewalk	One dollar and forty cents per square foot	1.40
Curbface Walk	One dollar and sixty-five cents per square foot	1.65
Wingwalk	One dollar and seventy-five cents per square foot	1.75
6" Concrete for Private Drives	Eighteen dollars and no cents per square yard	18.00
Asphalt Patching	No dollars and thirty cents per lineal foot	0.30
Topsoil	Three dollars and no cents per ton	3.00

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5946-82 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally and in all respects completed on or before June 30, 1983 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of $25.00 for each and every day after said date, 19___ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 7 day of December, 1982.

ATTEST:

Janice M Hipskind
Corporate Secretary

HIPSKIND CONCRETE CORPORATION

BY: Patrick D Hipskind

ITS: Pres

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

[signature]

Ben R. Collins

Robert Anderson Olaf

Its Board of Public Works and Mayor.

ATTEST:

Sandra E. Kennedy
Secretary and Clerk

Adjust Casting to Grade	Forty-five dollars and no cents per each	45.00
Seed	No dollars and fifty cents per square yard	0.50
SUB TOTAL	Fifteen thousand, two hundred and ninety-one dollars and fifty cents	$15,291.50
ALTERNATE***		
Concrete Removal	Two dollars and ten cents per square yard	2.10
Curb Removal	Two dollars and no cents per lineal foot	2.00
Concrete Curb Type III	Six dollars and no cents per lineal foot	6.00
2 Ft. Curbface Walk	Two dollars and eighty-five cents per square foot	2.85
4" Concrete Sidewalk	One dollar and fifty cents per square foot	1.50
Asphalt Patching	One dollar and no cents per lineal foot	1.00
Seed	One dollar and no cents per square yard	1.00
Topsoil	Five dollars and no cents per ton	5.00
ALTERNATE SUB TOTAL	Eight thousand, one hundred and ninety-eight dollars and no cents	$8,198.00
TOTAL	Twenty-three thousand, four hundred and eighty-nine dollars and fifty cents	$23,489.50

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

BILL NO. G-78-10-41 (as amended)

GENERAL ORDINANCE NO. G-34-78 (as amended)

AN ORDINANCE amending Chapter 15 of the Code of the City of Fort Wayne, Indiana of 1974.

BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Section 15-13 "Employment under Municipal Contract," Article III, Chapter 15 of the Code of the City of Fort Wayne, Indiana of 1974 is amended to be and read as follows, to wit:

"Sec. 15-13 Same - Under Municipal Contract.

<u>15-13-1 Definitions</u>. As used in this Section, the following words have these meanings:

a. The terms "Discriminates," "discriminating," "discriminatory" mean and include:

(1) to promote segregation or separation in any manner, to treat any person differently, or to exclude from or fail or refuse to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of the race, religion, sex, color, national origin or handicap of any such person;

(2) also, to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped employee;

(3) also, to fail to make reasonable accommodation to the religious observance or practice of any employee or prospective employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the conduct of the employer's business;

(4) also, to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, religion, color, national origin or handicap;

(5) the following practices are <u>not</u> included in the meaning of "discrimination":

(a) for any not-for-profit association, incorporated or otherwise, organized exclusively for fraternal or religious purposes, to devote its resources to its own religion or denomination, or to give employment preference to its own members,

(b) for any not-for-profit association, incorporated or otherwise, established for the purpose of offering or providing education, training or other social services and benefits to handicapped persons, to devote its resources to such handicapped persons with respect to such education, training or social services and benefits.

b. The term "handicap" means and includes:

(1) any physical or mental impairment which substantially limits one or more of a person's major life activities; or

(2) a record of such an impairment, and includes,

(3) a person who is regarded as having such an impairment; provided that,

(4) this term does not include drug or alcohol abuse or addiction.

c. The term "obstruct" means and includes the actions of any person knowingly obstructing the fair and lawful enforcement of this Article of this Chapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act of discrimination as defined herein, after such person has received actual notice of a discrimination charge or has been served notice of a complaint filed.

d. The term "retaliate" means and includes the actions of any person in discriminating against any other person with regard to, or denying any other person access to or opportunities in employment, because any such other person has opposed any practice made unlawful by this Article of this Chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this Article of this Chapter.

15-13-2 Mandatory Covenants. Every contract for or on behalf of the City of Fort Wayne for the construction, alteration or repair of any public building or public work or the performance of any other work or service shall contain provisions by which the contractor agrees, as follows:

a. That in the performance of work under such contract or any subcontract thereunder, the contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, will not discriminate against any person who is qualified and available to perform the work to which the employment relates.

b. That such contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor will not obstruct the enforcement of this Article of this Chapter.

c. That such contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor will not retaliate against any person.

15-13-3 Enforcement. Enforcement of this Article of this Chapter shall be through order of the Board of Public Works, in the following manner:

a. Whenever any member of the Board of Public Works, or whenever the Affirmative Action Officer who is assigned to help watch over public contracts has reason to believe that any of the provisions hereof have been violated, the matter may be referred to the Metropolitan Human Relations Commission for investigation and initiation of discrimination charges against the contractor or subcontractor. Cases over which the Commission has no jurisdiction shall be investigated by said Affirmative Action Officer.

b. A final order of the Metropolitan Human Relations Commission shall be forwarded to the Board of Public Works, which may invoke one of the remedies set forth in Sub Section 15-13-4 hereof. If it is a matter over which the Metropolitan Human Relations Commission has no jurisdiction, the Board of Public Works shall conduct a hearing to determine whether there has been a breach of this Article of this Chapter. In so doing, the Board may call upon the Commission for consultation.

15-13-4 Remedies. Upon finding that a contractor or sub-contractor or any person acting on behalf of such contractor or subcontractor has violated a provision or provisions of this Article of this Chapter, whether discriminating, obstructing, retaliating, or otherwise, the Board of Works may:

a. Deduct from the amount payable to the contractor by the City of Fort Wayne under such contract a penalty of no less than ten dollars ($10.00) per day, per violation, nor more than one thousand dollars ($1,000.00) per day, per violation. Each day on which a continuing violation exists, shall be deemed a separate offense; or,

b. The Board of Works may cancel or terminate the contract, and all money due or to become due thereunder may be forfeited, for a second or any subsequent violation of this article of this Chapter.

SECTION 2. That Chapter 15, Article III, of the Code of the City of Fort Wayne, Indiana of 1974 is further amened by adding thereto a new section 15-13A, which shall be and read as follows, to wit:

"Sec. 15-13A. A verbatim copy of Sec. 15-13 may be attached as an exhibit to and incorporated in and made a part of any contract made by or on behalf of the City of Fort Wayne, Indiana for any public work; which shall constitute compliance with Sec. 15-13-2."

Improvement Resolution

FOR CURB AND SIDEWALK

No. 5946 - 1982

RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDI

That it is deemed necessary to improve curbs and sidewalk within the WEST CENTRAL NEIGHBOR HOOD at various locations along the following streets: Thieme Drive, Main St., Nelson Street, Berry Street, Wayne Street, Rockhill, Jackson Street, and Union St.; also known as WEST CENTRAL NEIGHBORHOOD IMPROVEMENT, PHASE VII

all in accordance with the profile, detail-drawing and specifications on file in the office of the Departmen Public Works of said City; and such improvement is now ordered.

It is hereby found by said Board of Public Works that all benefits accruing hereunder will be to the general public of the City of Fort Wayne and that no special benefits will accrue to any property owner adjoining said improvement or otherwise assessable under said improvement. The cost of said improvement shall be paid By Community Development & Planning.

Adopted, this __________ *day of* __________

ATTEST: __________

Secretary & Clerk

BOARD OF PUBLIC WORKS: __________

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we HIPSKIND CONCRETE CORPORATION as Principal, and the ______________________________ ______________________, a corporation organized under the laws of the State of ________________, and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of TWENTY-THREE THOUSAND, FOUR HUNDRED AND EIGHTY-NINE DOLLARS AND FIFTY CENTS --------------------------- ($23,489.50----------), for the payment whereof well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The condition of the above obligation is such that

WHEREAS, the Principal did on the 1 day of December, 1982, enter into a contract with the City of Fort Wayne to construct

Improvement Resolution No. 5946-82

Curbs and sidewalks where needed along Thieme Drive, Main Street, Nelson Street, Berry Street, Wayne Street, Rockhill, Jackson Street, and Union Street.

Also known as WEST CENTRAL NEIGHBORHOOD IMPROVEMENT, PHASE VII.

at a cost of $23,489.50---------, according to certain plans and specifications prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of three (3) years from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

HIPSKIND CONCRETE CORPORATION
(Contractor)

BY: [signature]

ITS: Pres.

ATTEST:

____

(Title)

~~TRININTY UNIVERSAL INSURANCE~~
Surety

*BY: [signature]
Authorized Agent
(Attorney-in-Fact)

*If signed by an agent, power of attorney must be attached

ATTACH POWER OF ATTORNEY

BILL NO. S-82-12-28

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS REFERRED AN ORDINANCE approving Resolution No. 5946-82, West Central, Phase VII, with Hipskind Concrete Corporation, in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

VICTURE L. SCRUGGS, CHAIRMAN — Victure Scruggs

SAMUEL J. TALARICO, VICE CHAIRMAN — Samuel J. Talarico

MARK E. GiaQUINTA — Mark E. GiaQuinta

PAUL M. BURNS — [signature]

ROY J. SCHOMBURG — Roy J. Schomburg

1-11-83

CONCURRED IN

DATE______ CHARLES W. WESTERMAN, CITY CLE

TITLE OF ORDINANCE Contract for Res. #5946-82, West Central Phase VII.

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

S-82-12-28

SYNOPSIS OF ORDINANCE Installation of curbs and sidewalk where needed along Thieme Drive, Main St., Nelson Street, Berry Street, Wayne Street, Rockhill, Jackson Street and Union Street. Also known as West Central Neighborhood Improvement, Phase VII. Contractor awarded to Hipskind Concrete.

Prior approval received on September 14, 1982.

EFFECT OF PASSAGE Improvement to West Central Neighborhood Improvement, Phase VII.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $23,489.50

ASSIGNED TO COMMITTEE